

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Case No. 17-17361- (AIH)
Richard M. Osborne)	
)	Chapter 11
)	
Debtor)	Judge Arthur I. Harris

**Objection to Amended First and Final Interim Application of Leslie E. Wargo, Esq.
for Approval of Compensation and Reimbursement of Expenses
as Special Counsel for Debtor in Possession**

Daniel M. McDermott, United States Trustee for Region 9, pursuant to his administrative responsibilities, has reviewed the *Amended First and Final Interim Application of Leslie E. Wargo, Esq. for Approval of Compensation and Reimbursement of Expenses as Special Counsel for Debtor in Possession* (“Application”) and has the following objections to the Applications.

1. This Court has jurisdiction to hear the above-captioned Motion.

2. Pursuant to 28 U.S.C. §586, the United States Trustee is charged with the supervision and administration of all cases commenced under Chapter 11, Title 11, United States Code.

This duty is part of the United States Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that United States Trustee has “public interest standing” under 11 U.S.C. §307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*,

898 F.2d 498, 500 (6th Cir. 1990). Pursuant to 11 U.S.C. §307, the United States Trustee has standing to be heard on any issue pending before this Court.

3. On December 17, 2017, Richard M. Osborne (“Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. On July 3, 2019, the case was converted to a case under chapter 7 of the Bankruptcy Code and Kari B. Coniglio was appointed as chapter 7 trustee (“Trustee”).

4. 11 U.S.C. §330 states after notice and a hearing, the court may award to a professional reasonable compensation for actual, necessary services rendered and reimbursement for actual and necessary expenses. The United States Trustee believes payment of the fees and expenses requested in the Application is premature at this time.

5. **Timing of payment:** The Application requests allowance of fees in the amount of \$46,200.00 and expenses of \$1,092.36 as an administrative expenses against the estate to be immediately paid by the Chapter 7 Trustee. The United States Trustee objects to the immediate payment of any chapter 11 administrative expenses. Typically in a converted chapter 7 case, claims are paid after administration of all assets by the Trustee; approval of the Trustee’s Final Report; and paid consistent with the priority distribution scheme established by the Bankruptcy Code under 11 U.S.C. §726. Section 726 allows for chapter 11 administrative expenses to be paid after chapter 7 administrative expenses are paid. Since it is unknown at the time what the chapter 7 administrative expenses will be or that there will be sufficient funds to pay all chapter 7 administrative expenses, it would be premature to pay any chapter 11 administrative expense and would be inconsistent with section 726.

WHEREFORE, the United States Trustee respectfully requests the Court consider the above objections and enter an Order consistent with this Objection and for such other relief as this Court deems appropriate.

Respectfully submitted,

DANIEL M. MCDERMOTT
United States Trustee, Region 9

by: /s/ Maria D. Giannirakis
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Certificate of Service

I certify that on August 20, 2019, a true and correct copy of *Objection to Fee Application* was served: Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

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